

**NOTICE OF POSTING OF PROPOSED MINERAL EXTRACTING, MONITORING,
AND RECLAIMING ORDINANCE**

PLEASE TAKE NOTICE that a Tallmadge Charter Township Mineral Extracting, Monitoring and Reclaiming Ordinance had its first reading at a meeting of the Tallmadge Charter Township Board held on July 14, 2015.

The Mineral Extracting, Monitoring and Reclaiming Ordinance will regulate licensing and monitoring of mineral extraction and disposal within the township and provide provisions to reclaim mining site and provide penalties for violations of the Ordinance. The proposed Ordinance is scheduled for a second reading at the August 11, 2015 meeting of the Board of Trustees.

PLEASE TAKE FURTHER NOTICE that the Ordinance has been posted in the office of the Tallmadge Charter Township Clerk, Tallmadge Charter Township, 0-1451 Leonard Road, N.W., Grand Rapids, Michigan (telephone: 616-677-1248), and on the Township website at www.tallmadge.com.

Dated: August 2, 2015

Lenore Cook, Clerk
Tallmadge Charter Township

The following Mineral Extracting, Monitoring and Reclaiming Ordinance was introduced and a first reading completed at the Tallmadge Charter Township Board meeting on July 14, 2015.

TALLMADGE CHARTER TOWNSHIP

**MINERAL EXTRACTING, MONITORING, AND
RECLAIMING ORDINANCE**

ORDINANCE NO. _____

AN ORDINANCE TO REGULATE LICENSING AND MONITORING OF MINERAL EXTRACTION AND DISPOSAL WITHIN TALLMADGE CHARTER TOWNSHIP, TO RECLAIM MINING SITES, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THE ORDINANCE.

TALLMADGE CHARTER TOWNSHIP, COUNTY OF OTTAWA, STATE OF MICHIGAN, ORDAINS:

SECTION 1.00 NAME OF ORDINANCE

This Ordinance shall be known as the Tallmadge Charter Township Mineral Extracting, Monitoring, and Reclaiming Ordinance.

SECTION 2.00 DEFINITIONS

- 2.1 "Soil" means topsoil, subsoil, clay, sand, gravel, rock, stone and aggregate, earth, or any similar material proposed to be moved, removed, excavated, mined, or dumped on land.
- 2.2 "Mining" means a pit or excavation in the earth from which soil is taken by digging or by some other method of extraction, together with the land, buildings, and machinery belonging to the pit or excavation operation.
- 2.3 "Reclamation" means the establishment, recovery, and reconstruction of the land contained in a mining site, or a part of the land, to a condition approved by the Township Board as at least a part of a plan incorporated into a permit issued.
- 2.4 "Person" means an individual, partnership, firm, corporation, or association, or any combination of them.
- 2.5 Terms not specifically defined in this Ordinance shall have the meanings customarily assigned to them.

SECTION 3.00 GENERAL RESTRICTIONS

All soil which is moved, removed, excavated, mined, or dumped, when a permit under the

Ordinance is not required, shall still be moved, removed, excavated, mined, or dumped in accordance with the following restrictions and regulations

- 3.1 All soil moved, removed, excavated, mined, or dumped shall be stabilized as soon as possible in such a manner as to prevent soil or dust or both from being blown, washed, or otherwise transferred to adjacent lands or public or private streets.
- 3.2 Trees and vegetation shall not be stripped from the land preparatory to the soil being moved, removed, excavated, mined, or dumped, so as to prematurely expose soil to wind or water erosion.

SECTION 4.00 PERMIT REQUIRED

- 4.1 It shall be unlawful for any person to move, remove, excavate, mine, or dump any soil without a permit under this Ordinance, except that no permit shall be required when:
 - A. The total amount of soil to be moved, removed, excavated, mined, or dumped in any one project is less than two thousand (2,000) cubic yards;
 - B. The soil which is to be moved, removed, excavated, mined, or dumped is directly related to or necessary for the construction or alteration of a building, structure, or other improvement for which a permit has been issued pursuant to the applicable building code; or
 - C. The soil which is to be moved, removed, excavated, mined, or dumped is directly related to or necessary for the landscaping of a lawn or yard, the construction or alteration of a driveway, the construction of improvements within a development, or the filling of the inside of a building or structure.
- 4.2 If the soil is to be moved, removed, excavated, or mined at one parcel of land in the Township and dumped at another parcel of land in the Township, then two permits are required: one for moving, removing, excavating, or mining the soil, and the second permit for dumping the soil.
- 4.3 Only one permit is required if soil is to be moved, removed, excavated, or mined at one location on a parcel of land and dumped elsewhere on the same parcel of land.

SECTION 5.00 APPLICATION FOR SOIL MOVING PERMIT

- 5.1 An application for the issuance of a soil moving permit shall be filed with the Township Zoning Administrator, who shall provide copies to the Township Supervisor and the Township Planner.
- 5.2 In those instances where there will be only one operator moving, removing, excavating, mining, or dumping soil, application for a soil moving permit may be

made by the operator on behalf of the landowner or person owning the mining rights in the soil.

- 5.3 Where more than one operator will be moving, removing, excavating, mining, or dumping in connection with a project, then application for a soil moving permit shall be made by the landowner or person owning the mineral rights in the soil.
- 5.4 In all cases operators and the landowner or person owning the mineral rights in the soil shall be responsible for and comply with all the terms and provisions of this Ordinance. An application for a soil moving permit shall set forth the following information and be accompanied by the following data:
 - A. Full identification of the applicant and all persons to be directly or indirectly interested in the soil moving permit if granted;
 - B. The business address of the applicant;
 - C. A complete physical and legal description (including street address of location where applicable) of the land to which the soil moving permit is to apply (the legal description shall be certified by a registered civil engineer or land surveyor);
 - D. A topographic map, certified by a registered civil engineer or land surveyor and prepared with four foot contours, covering the land upon which the soil moving is to take place, and 300 feet, so far as possible, outside the exterior boundary of that land;
 - E. The exact nature of the proposed soil moving; the type of soil to be moved, removed, excavated, mined, or dumped; and an estimate of the approximate number of cubic yards of soil involved;
 - F. A statement that none of the soil which will be subject to the soil moving permit will be contaminated soil, defined as soil onto which available evidence indicates a hazardous substance (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, or as defined in a subsequent federal law) was spilled, spread, disposed, or deposited;
 - G. A further detailed description, by maps or otherwise, of the contour and condition of the land as it will be left upon completion of the soil moving, including a description of any landscaping to be done or other stabilization control to be employed to leave the land in a reasonably level and usable condition, and to prevent erosion, dust, or other nuisance conditions;
 - H. A statement of the manner in which the soil moving work is to be completed and the kind of equipment proposed to be employed;

- I. The route which the applicant proposes to use over public streets and over private property in transporting the soil;
- J. The past experience of the applicant in the matter to which the soil moving permit pertains and the name, address, and past experience of the person to be in charge of the soil moving;
- K. Whether or not any similar permit to or application from the applicant has ever been revoked, suspended, or denied, and the circumstances of any such action;
- L. The time within which the soil moving is to be commenced after the granting of the permit and the time when it is to be completed;
- M. Upon the request of the applicant, all or part of the requirements contained in this subsection may be waived by the Township Zoning Administrator at the time the application is filed, but any waiver shall not preclude the Township Board from requiring at a later time that the information required by this subsection be provided to the Township before action is taken on the application for the permit;
- N. The measures that will be taken by the applicant to control noise, vibration, dust, and traffic;
- O. A description of any traffic control devices, public facilities, or public services which will be required for the proposed soil moving, and a statement as to how and by whom the applicant proposes that the costs thereof be paid;
- P. Any measures which the applicant proposes to take to ensure public safety, the exclusion of children from the land in question, and the lateral support of surrounding land, buildings, structures, or other improvements; and
- Q. Such further information as the Township may reasonably require.

SECTION 6.00: RESTRICTIONS GOVERNING PERMIT HOLDER

Every person to whom any permit is granted under this Ordinance shall comply with the following requirements.

- 6.1 All vehicles transporting soil from or to land subject to a soil moving permit, over public streets in the Township, shall follow the truck route established by Township ordinance, except as otherwise established by the Township Board in granting the soil moving permit and establishing the truck route deemed least dangerous to public safety, deemed to cause the least interference with general traffic, and deemed to

cause the least damage to public streets.

- 6.2 Adequate safeguards shall be provided during the life of the soil moving operation to prevent soil or dust from being deposited on adjoining lands and public or private streets, whether from water erosion, blowing soil, dust creation, or other source related to the operation.
- 6.3 The restored elevation of the land following the completion of the soil moving operation shall be compatible with the surrounding area, and the land shall be left in a condition suitable for subsequent development for uses permitted in the zoning district in which the land is zoned by the Tallmadge Charter Township Zoning Ordinance, as amended (the "Zoning Ordinance").
- 6.4 If, at the time it grants a permit under this Ordinance, the Township Board determines that the soil moving operation will present a dangerous condition if left open and unfenced, then the operation shall be enclosed by chainlink, wire mesh, or snow fence completely surrounding the portion of the land where the soil moving operation takes place. The fence shall be not less than four feet in height, complete with gates. The gates shall be kept locked when soil moving operations are not being conducted on the property. Barbed wire shall not be used as part of any such fence.
- 6.5 Any soil that may be deposited on any public street or public place from any vehicle transporting materials from the land subject to a soil moving permit shall be immediately removed, without damage to the public street or public place, at the expense of the permit holder.
- 6.6 Any roads or portions of roads used for the purpose of ingress and egress to the soil moving operation and located within 500 feet of an occupied residence or a commercial or industrial establishment shall be kept dust-free by hard topping with concrete, bituminous substance, chemical treatment, or such other means as may be proposed by the applicant and approved by the Township.
- 6.7 No part of a soil processing operation (screening, washing, crushing, etc.) shall take place closer than 500 feet of any residence or closer than 100 feet of any street or property line.
- 6.8 At the time the soil moving operation is completed, the slopes of the banks of the property where the mining occurred shall be at least three feet of run to one foot of rise.
- 6.9 If a soil moving operation creates a pond the pond must comply with the requirements of the Zoning Ordinance, and all applicable requirements of State law.
- 6.10 No cut or excavation shall be made closer than 30 feet from a public or private street; closer than 40 feet from any residential or commercial property; or closer than 25 feet from any woodlot, farmland, or pastureland.

- 6.11 While the soil moving operation is conducted, no body of water which exists in conjunction with the operation may become stagnant. Any such body of water shall be sprayed or otherwise treated as necessary to not create breeding mosquitoes or otherwise unhealthy conditions.
- 6.12 The land utilized for each phase of the soil moving operation shall be landscaped or otherwise stabilized upon completion of each phase so that all soil erosion by wind or water or both shall be eliminated.
- 6.13 No soil shall be mined, excavated, or removed in such a manner as to cause water to collect or to result in a place of danger or a menace to the public health. The land shall at all times be graded so as to not interfere with surface water drainage.
- 6.14 If a permit is granted under this Ordinance for a stripping operation, and if topsoil exists on the land in question which is suitable for growing turf or for other land uses at the time the soil moving operation begins, sufficient topsoil shall be stockpiled so that the entire site can be restored when the operation is completed. The replacement of topsoil shall be made immediately following the termination of the stripping operation; however, if the stripping operation continues for more than 30 days, the applicant shall replace the stored topsoil over the stripped area as the work progresses.
- 6.15 The Township may require additional performance standards or stricter performance standards than are provided in this Ordinance if specific conditions make those standards necessary to achieve the purposes of this Ordinance. The Township may also impose conditions, restrictions, or requirements as deemed necessary to achieve the purposes of this Ordinance. Violation of any performance standard, condition, restriction, or requirement imposed by the Township shall be deemed a violation of this Ordinance.

SECTION 7.00 PAYMENT OF FILING FEE

- 7.1 At the time of filing an application for a permit under this Ordinance, the applicant shall pay a filing fee as established by the Township Board from time to time by resolution. The filing fee shall be for the purpose of offsetting and defraying any cost or expense to the Township of investigating, reviewing, and processing the application, including any professional fees incurred by the Township.
- 7.2 The Township Board may contract with a registered engineer or any other expert to advise as to the applicant's compliance with the requirements of this Ordinance, prior to issuance of a permit, and the costs may be added to the costs of the application and charged to the applicant prior to the issuance of a permit or license. Prior to contracting with a registered engineer, the Township shall negotiate with the applicant as to the cost of the contract, and the applicant shall have the option of either proceeding with the application in accordance with the added cost or

withdrawing the application.

SECTION 8.00 PLANNING COMMISSION RECOMMENDATION

- 8.1 Procedure: Upon the filing of an application for a permit as provided in Section 5 of this Ordinance, one copy of the application together with all supporting data shall be delivered to the Planning Commission.
- 8.2 Investigation: The Planning Commission shall review the application and make a written recommendation to the Township Board concerning the granting or denial of the permit. In its review the Planning Commission may consider all factors it deems relevant to the application, especially whether the application is for a permit which would be for a soil moving operation in compliance with this Ordinance, and may further conduct such investigations, interviews and hearings that it deems necessary in making its recommendation to the Township Board.

SECTION 9.00 HEARING BEFORE THE TOWNSHIP BOARD

After receiving the recommendation of the Planning Commission pursuant to Section 8 of this Ordinance, and before acting upon such application, the Township Board shall hold a public hearing. All property owners within one-quarter mile of the proposed site will be informed by first class mail of the applicant for a soil moving operation permit.

SECTION 10.00 CONSIDERATION OF APPLICATION BY TOWNSHIP BOARD

After completion of the public hearing specified in Section 9 of this Ordinance, the Township Board shall determine whether to grant or deny the permit, and any conditions placed upon the permit if granted. The Township Board shall take into consideration the recommendation of the Planning Commission, the zoning of the site, the past performance of the applicant in similar undertakings, the financial responsibility of the applicant, the proposed duration and phasing of the soil moving operation, and all matters relevant to compliance with the requirements of this Ordinance. No permit shall be granted if it appears from investigation that the soil moving would remove the lateral and subjacent support of the adjacent land, result in a dangerous topographic condition, or result in seepage or slides.

SECTION 11.00 PERMITS: DEPOSIT OF BOND AND CERTIFICATE OF INSURANCE

- 11.1 The Township Board may, in its discretion, require as a condition to the granting and maintaining of a soil moving permit that the applicant obtain, maintain, and file with the Township Treasurer, in the form and amount specified by the Township Board, a performance bond written by an insurance company licensed to do business in the State of Michigan. The form specified may include but is not limited to a performance bond or irrevocable letter of credit for mitigation of adverse effects caused by the soil moving project (including but not limited to adverse impacts upon drinking water and site remediation).

- 11.2 The Township Board shall, in establishing the amount of the security, consider the scale of the operations, the prevailing cost to rehabilitate the property upon default of the operations, court costs, and other reasonable expenses to guarantee that the applicant will fully and faithfully perform all applicable performance standards, conditions, restrictions, and requirements of this Ordinance and any permit issued pursuant to this Ordinance, and any special performance security if the Township Board determines that any such standard, condition, restriction, or requirement has been violated.
- 11.3 The Township Board may also require, as a condition to the granting of any soil moving permit, that the applicant deposit a certificate of an indemnity company licensed to do business in the State of Michigan, in an amount specified by the Township Board, insuring the Township against any loss or damage to persons or property arising directly or indirectly from the permitted operations of the applicant, or any person acting on the applicant's behalf.

SECTION 12.00 EXPIRATION OF PERMIT

- 12.1 In the event that any work for which a soil moving permit has been granted under this Ordinance is not commenced within six months, or in the event work is started on a soil moving project and the work is abandoned for a period of six months, the permit shall automatically expire and not be valid for any purpose. An expired permit may be reviewed by the Township Board for reinstatement or continuance without payment of a permit filing fee if the commencement date change or abandonment is caused by access problems, weather conditions, or other conditions or circumstances found by the Township Board to be beyond the control of the applicant.
- 12.2 A soil moving permit issued under this Ordinance shall be for two years. The permit may be renewed for additional intervals of two years, with the approval of the Township Zoning Administrator and the Township Supervisor, subject to any limitations established by the Township Board, and subject to appeal to the Township Board.

SECTION 13.00 REVOCATION AND SUSPENSION OF PERMIT

Any soil moving permit issued under this Ordinance may be revoked or suspended for failure to comply with any of the performance standards, conditions, restrictions, or requirements established for the permit by the Township Board. Revocation or suspension of a permit shall be accomplished only pursuant to a hearing held before the Township Board after five days written notice to the applicant, stating the grounds of complaint, and stating the time and place where the hearing will be held.

SECTION 14.00 FEES

- 14.1 The applicant shall pay a tipping fee for each cubic yard of soil removed, whether or

not stockpiled, under the authority of the soil moving permit. The amount of the tipping fee shall be established by resolution of the Township Board and may be modified from time to time. The tipping fee shall be paid monthly to the Township, based upon the records of the applicant.

- A. The tipping fees shall be used for paying the Township's expenses of administering and enforcing this Ordinance and paying for any damages or defaults occurring as a result of the soil moving operation, including but not limited to damages to roads or private property; protection of the public from damages to the air, pollution or insect control; and protection from dangers of excavations upon the land for which the soil moving permit was issued.
- B. The applicant shall keep accurate records of the materials removed and these records shall be open to inspection at all reasonable times by the Township.

14.2 In addition to the tipping fee payable pursuant to Section 14.1 above, the applicant shall pay:

- A. A sum, in an amount to be established by resolution of the Township Board, which may be modified from time to time by the Township Board, for the purpose of processing the periodic review of the permit, if any, as provided in Section 7 of this Ordinance; and
- B. A sum, in an amount to be established by resolution of the Township Board, which may be modified from time to time by the Township Board, for the purpose of conducting a public hearing by the Township Board for the periodic review of the permit and soil moving project, or in the event any violation of this Ordinance requires a public hearing, as determined in the sole discretion of the Township Board.

SECTION 15.00 ENFORCEMENT AND PENALTIES

A violation of this Ordinance is a municipal civil infraction. For a first offense, a municipal civil infraction citation shall be issued, for which the fine shall be not less than \$50.00 and not more than \$249.00. The fine shall be not less than \$250.00 and not more than \$499.00 for a second subsequent offense. The fine shall be not less than \$500.00 for a third or greater subsequent offense, in addition to all other costs, damages, expenses, and actual attorney fees incurred by the Township in enforcing the Ordinance as ordered by the court. For the purposes of this Section, "subsequent offense" means a violation of this Ordinance committed by the same person within 12 months of a previous violation of the Ordinance for which the person admitted responsibility or was adjudicated to be responsible. Each day that a violation occurs shall constitute a separate offense.

SECTION 16.00 SEVERABILITY AND CAPTIONS

This Ordinance and its various parts, sections, subsections, sentences, phrases, and clauses are severable. If any part, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected. The captions included at the beginning of each section are for convenience only and shall not be considered as part of this Ordinance.

SECTION 17.00 REPEAL

All ordinances which are in conflict in whole or in part with any of the provisions of this Ordinance as of the date of this Ordinance, including but not limited to Ordinance No. 061494, are repealed to the extent of that conflict.

SECTION 18.00 SAVINGS CLAUSE

A permit previously issued or an ordinance enforcement action which is pending on the effective date of this Ordinance under Ordinance No. 061494, which is repealed by this Ordinance, or an ordinance enforcement action which is commenced within one year after the effective date of this Ordinance arising from a violation of Ordinance No. 061494, which was committed prior to the effective date of this Ordinance, shall be handled, determined, and resolved in accordance with the permit, remedies, and procedures provided by Ordinance No. 061494 exactly as if it had not been repealed. Further, all charges, fees, interest, or penalties levied, imposed, or accrued but not yet billed or paid under Ordinance No. 061494 that are unbilled or uncollected as of the effective date of this Ordinance shall be billed and collected by the Township under the terms of Ordinance No. 061494, or any permit issued under it.

SECTION 19.00 ADMINISTRATIVE LIABILITY

No officer, agent, employee, appointee, or member of the Township Board shall be personally liable for any damage that may occur to any person as a result of any act, decision, or other consequence or occurrence arising out of the discharge of duties and responsibilities pursuant to this Ordinance.

SECTION 20.00 PUBLICATION/EFFECTIVE DATE

This Ordinance shall become effective seven days after the publication of a summary of its provisions in a local newspaper of general circulation.

James VanEss, Supervisor

Lenore Cook, Clerk

CERTIFICATE

I, Lenore Cook, the Clerk of the Charter Township of Tallmadge, Ottawa County, Michigan, certify that the foregoing Ordinance was adopted at a regular meeting of the Township Board held on _____, 2015. The following members of the Township Board were present at the _____ meeting:_____

_____.

The Ordinance was adopted by the Township Board with members of the Board _____ voting _____ voting in favor and members of the Board _____ voting in opposition. A Notice of Adoption of the Ordinance was published in the *Ottawa Advance*, on _____, 2015.

Lenore Cook, Township Clerk

